

Application No. 10/718,393
Amendment Dated: September 25, 2007
Reply to Office Action of: June 25, 2007

REMARKS/ARGUMENTS

Claims 1-7 and 14-23 are pending in this application. Claims 1-7, 14-20 and 22 have been allowed. Claims 21 and 23 stand rejected. Claim 21, the only rejected independent claim, has been amended.

Reconsideration of the rejection of claims 21 and 23 in view of the above amendments and the following remarks is respectfully requested.

Claim Rejection - 37 USC § 112

Claim 21 was rejected under 37 USC § 112, first paragraph, as failing to comply with the written description requirement. The Examiner has taken the position that the claimed subject matter "and is not detachably removable therefrom" in claim 21 is not supported in the originally filed specification and constitutes new matter. This phrase has been deleted from newly amended claim 21 and replaced with the phrase "independently of said cap". As will be explained more fully below, this phrase has proper support in the specification. Accordingly, Claim 21 as now amended satisfies the requirements of 35 USC § 112.

Claim Rejection - 35 USC § 102

Claims 21 and 23 stand rejected under 35 USC § 102(e) as being anticipated by Bublewitz et al. 6,352,177. The Examiner has taken the position that Bublewitz discloses a mixing helix (77) disposed within the outlet tube 75, wherein the mixing helix is fastened to the transverse wall 60 as seen in Figure 7.

Newly amended claim 21 now sets forth a transverse wall being disposed between the outlet openings, a movable cap having an outlet tube, and a mixing helix disposed within the outlet tube and which is fastened to the transverse wall independently of said cap.

The fact that the mixing helix is fastened to the transverse wall finds support in the specification at page 4, lines 27-29, where it is stated, "The cap 10 has a curved outlet tube 12, which encloses a mixing helix 13, which is fastened on the transverse wall 7." Support for the statement that the mixing helix is fastened to the transverse wall **"independently of said cap"** is found by reference to the drawings which clearly shows the fact that the cap plays no part in fixing the helix to the transverse wall. Additionally, support is also found in the specification at page 2, lines 17-18, wherein it is stated, "The mixing helix is in this case fitted on the cartridge and not on the cap. For this purpose, it is fitted on a transverse wall".

According to the Examiner's interpretation of the Bublewitz patent, the cap 62 has an outlet tube 75, which actually is an aperture in the top surface of the cap. A static mixer 77 abuts against the upper surface 60 of the piercing member 48/50 which the Examiner considers to be the transverse wall. As is shown clearly in Figure 7, and as stated at column 8, lines 14-33 of the Bublewitz specification, it is clear that the cap 62 serves to hold the helix 77 against the upper surface of the piercing member 48/50.

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As recited in the claim 21, the mixing helix is fastened to the transverse wall independently of the cap. By contrast in the Bublewitz device, the mixer 77 simply abuts the transverse wall 60 and held there by the cap 62. If the cap is removed, the mixer is no longer "fastened" to the transverse wall. There is no teaching or suggestion in the Bublewitz patent of fixing the mixer helix to the transverse wall. Any analogous Bublewitz mixing element is merely temporally retained against any analogous transverse wall by the cap. Thus Bublewitz does not contain any teaching which would render the subject matter of claim 21 obvious. To the extent that the Examiner interprets the Bublewitz device as having the mixing element "fixed" to the transverse wall by virtue of the cap, Claim 21 now distinguished over such interpretation by the recitation "independently of said cap".

As newly amended claim 21 specifically sets forth that the helix is fastened to the transverse wall independently of the cap, Bublewitz fails to meet the terms of claims 21. Accordingly, claim 21 is patentable.

Claim 23 which depends from claim 21 is likewise patentable over the Bublewitz patent.

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Conclusion

In view of the above amendments and remarks, it is respectfully submitted that claims 21 and 23 patentably define over the art of record taken alone or in any possible combination. Favorable consideration of these claims is respectfully solicited.

Respectfully Submitted,

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